



Go-private transactions offer a challenge to IR pros' instincts

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By Michael Fox

With \$400 billion-plus in equity capital and the ability to leverage that two to four times, US private equity firms have access to a leveraged buyout funding stream of more than \$1 trillion in the next several years. As such, IR pros should get familiar with the communications activities involved with go-private transactions.

For starters, practitioners need to realize that communicating a leveraged buyout can seemingly run counter to an IR pro's basic instincts. IR is always focused on communicating how the company is acting in shareholders' best interests. This process mainly focuses on "selling" the company's future potential to new investors.

When it comes to announcing the board's recommendation to sell the company, the message is no longer about future potential. Instead, it amounts to, "We recommend a transaction that is superior to what we could otherwise achieve pursuing the strategy and plan we have so confidently communicated heretofore."

The central pillar of go-private communications is demonstrating that the board fulfilled its fiduciary obligations and secured the best outcome for shareholders by providing an "immediate," "certain" and "significant" or, at least "optimal" premium for their shares. In doing so, the communications must demonstrate that the board has actively sought the best and most viable outcome.

Key factors include documenting the search for competing bids, as well as the inclusion of a "go-shop" provision in the merger agreement and the terms of a break-up fee, both of which determine the company's flexibility to pursue a better offer prior to the transaction's close.

The outreach process must also factor in legal and regulatory re-quirements, including filing of the company proxy with the SEC, which provides the specific details on how the merger came about. All communication materials must be carefully crafted because they are typically deemed part of the "solicitation" for the transaction and therefore must be publicly filed with the SEC.

IR pros must also recognize that as soon as the transaction is announced, new investors - risk arbitrageurs - will often quickly buy a good percentage of shares, resulting in a dramatic turnover in the investor base. Plans must be made to communicate with proxy advisory firms prior to the shareholder vote, as their recommendations could sway a key percentage of that vote.

Go-private transactions will be on the rise. IR and corporate communications pros will be critical to the success of these transactions, but only if they understand the rules and know the players.

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